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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 430

VERNON C. LYONS,

Petitioner,

vs.

CHICAGO PARK DISTRICT,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI.

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THE BLAKELY-WARREN PRINTING COMPANY, CHICAGO

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COUNTERSTATEMENT OF THE CASE.

Petitioner seeks certiorari to review the unanimous decision of the Supreme Court of Illinois which affirmed petitioner's conviction for littering. In support of the petition, it is urged that the decision of the Illinois court is not in accord with this Court's decisions in *Schneider* v. *State*, 308 U. S. 147 (1939), and *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940). It is respondent's position that, on the contrary, the City of Chicago and the Illinois courts have paid scrupulous attention to those controlling Supreme Court decisions and have correctly followed their teachings in the instant case. Therefore, the petition should be denied.

The relevant facts are undisputed. In the early afternoon of June 24, 1966, a police officer observed a number

of young children going in and out between the parked cars in the city's Monroe street parking lot and placing printed material on the windshields and front seats of the cars (27-31). Some of the papers were already lying on the ground, having been blown from where they had been placed (31). The parking lot in question is located an unobstructed block from Lake Michigan and on the afternoon of the incident, the wind was about ten miles per hour with gusts of fifteen to twenty (68-69).

Shortly after two of the children involved were apprehended for questioning, the petitioner, Reverend Vernon C. Lyons identified himself as the person directing the broadside scattering of printed material. He was advised by a police officer that the conduct in which the children were engaged and in which the petitioner later admitted that he was also engaged, was in violation of the law. Mr. Lyons refused to agree to halt his project insisting that because the documents involved contained a religious message, a copy of the Acts of the Apostles, his activity was constitutionally protected. Petitioner was advised that he was free to stand on the sidewalk and hand his printed message to passers-by and persons entering and leaving the parking lot (73). Rejecting this alternative, petitioner stood firm on his asserted right to persist in the distribution in the manner described and was arrested. Contrary to the assertion at page 3 of the Petition no one else was arrested.

After trial by a jury, petitioner was found guilty of "throwing, casting, depositing, laying, placing, or scattering" his pamphlets in or upon the park property in violation of Chapter 17, § 11, of the Code of the Chicago Park District. A fine of $25.00 was imposed.

REASONS FOR DENYING THE WRIT.

We submit that the controlling distinction between the case at bar and *Schneider* is the difference between scattering and hand-to-hand distribution. Here printed material was being deposited and scattered. The invitation to make a hand-to-hand distribution was rejected. In *Schneider*, hand-to-hand distribution had been unconstitutionally prohibited and penalized.

Petitioner's first contention is that the Chicago Park District's Littering Ordinance is void on its face. No case of this Court is cited as authority for that assertion and indeed, as the Illinois Supreme Court concluded, none exists. As petitioner himself notes at page 4: "This court in *Schneider* v. *State of New Jersey*, 308 U. S. 147 (1939), held that a similar section of the Municipal Code of the City of Los Angeles was void 'as applied to the petitioner's conduct . . .' (p. 165)."

Contrary to petitioner's conclusory assertions, the ordinance involved is adequately narrow to escape condemnation for overbreadth. What is prohibited is the throwing, placing, or scattering of papers, refuse and other objects in or upon the public parks. The ordinance reaches only so far as is reasonably necessary to prevent conduct which is unquestionably proscribable. The ordinance is not reasonably subject to any construction that would include, and thus discourage, constitutionally protected activity. The essence of the petitioner's claim is apparently that the ordinance is too broad because it includes religious tracts among those papers which cannot be scattered about in the parks. But obviously pages from a newspaper, a statute book or the bible are not distinguishable from hand bills or candy wrappers when thrown down and blown about in the public parks and ways. They are equally litter.

Petitioner's second allegation is that, as applied to him, the statute is void as violative of those critical rights guaranteed by the First and Fourteenth Amendments. As petitioner indicates, the leading case is *Schneider* v. *State, supra*. In that case, this Court held:

> We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets. 308 U. S. at 162.

In this, the core passage of the *Schneider* case, the Court clearly identified that conduct which is protected and which may be proscribed. Here petitioner rejected the opportunity of "handing literature to one willing to receive it" and insisted on a supposed right to deposit his material in such a way as to directly cause littering of the park. The Chicago Park District has never and does not now claim the right to punish petitioner for distributing his religious tracts to those "who are willing to receive them." The Chicago Park District has not attempted to intervene unreasonably between the petitioner and willing recipients of his message. *Cf. Martin* v. *Struthers*, 319 U. S. 141 (1943).

The immensely significant difference between the several enactments involved in *Schneider* and the ordinance in the instant case is that in *Schneider* any public distributions were ordained unlawful, whereas, the Chicago Park District ordinance seeks only to prohibit the depositing or

scattering of material. Petitioner is simply one of those punishable individuals who "actually throws papers on the streets" within the meaning of *Schneider*. Unless his conduct may be curtailed, the state is at an utter loss to prevent the spoilation by litter of its public facilities. Unless his conduct may be curtailed, anyone may deposit papers on park benches, ballustrades, telephone kiosks and other structures and objects in the parks with impunity. Unlike the situation in *Schneider*, if the state may not punish petitioner, who consigned pieces of paper to automobile windshields on a gusty day and who is therefore directly responsible for the ultimate mess, it may not punish anyone.

Defendant's unexplained citations to opinions of the Corporation Counsel of Chicago are totally beside the point. All of the cited opinions concern City of Chicago ordinances, not § 17-11 of the Code of the Chicago Park District. All of them deal with regulations that control hand-to-hand distribution of commercial and advertising matter. They do not purport to apply to the act of depositing any literature on streets or sidewalks. Chapter 17, § 11, of the Chicago Park District Code is part of a comprehensive statutory scheme for regulating the use and enjoyment of the parks and is wholly unrelated in both text and context to the ordinances on which the cited opinions are based.

CONCLUSION.

The petition* should be denied.

Respectfully submitted,

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* We assume that by styling this proceeding a petition for a writ of certiorari, petitioner relies upon the Court's discretionary authority under 28 U. S. C. § 1257(3) to review a decision of a state court where the validity of a state statute has been called into question. Petitioner also has referred to his petition as an "appeal". Should the Court choose to treat this as an appeal, we request that this brief in opposition to certiorari be treated as a brief in support of a motion to dismiss the appeal as not involving a substantial federal question.